

SECTION V

INCOME LIMITS, RENT LIMITS, AND UTILITY ALLOWANCES

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This section of the Michigan LIHTC Compliance Manual Contains a generic discussion as to how income limits, rent limits, and utility allowances are calculated for the LIHTC Program. For related discussions, see the following:

- Income Limits for Particular LIHTC Projects – This topic is discussed in detail in [Section IV \(LIHTC Allocation Basics\)](#), [Section IX \(Unit-, Building-, and Project-Level Compliance Rules\)](#) and [Section X \(Federal and State Laws, Rules, Etc.\)](#).
- Income Limits for Particular Tenants – This topic is discussed in detail in [Section VI \(Qualifying Tenants for LIHTC Units\)](#).
- Interfacing LIHTC with other Government Housing Programs – This topic is discussed in [Part 1080](#).

Part 500 :: Income Limits for the LIHTC Program

IRS regulations state “*the income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of ...area median gross income under Section 8 of the United States Housing Act of 1937 ...Determination under the preceding sentence shall include adjustments for family size.*” The LIHTC Program uses income limits published by HUD. HUD publishes median income information for Michigan and each individual county or metropolitan area on an annual basis. For example, for the income figures published for Alger County, effective 04/06/01, as adjusted for each household size, are as follows:

	1	2	3	4	5	6	7	8
30% AMI	\$9,000	\$10,260	\$11,550	\$12,840	\$13,860	\$14,880	\$15,930	\$16,950
40% AMI	\$12,000	\$13,680	\$15,400	\$17,120	\$18,480	\$19,840	\$21,240	\$22,600
50% AMI	\$15,000	\$17,100	\$19,250	\$21,400	\$23,100	\$24,800	\$26,550	\$28,250
60% AMI	\$18,000	\$20,520	\$23,100	\$25,680	\$27,720	\$29,760	\$31,860	\$33,900

For related topics, See [Part 915 \(140% / Next Available Unit Rule\)](#) and [Part 910 \(Deeper Targeting / Agency Covenants\)](#).

Part 505 :: Computation Methodology for Income Limits

All LIHTC projects located in Michigan must use the income and rent limit figures published by MSHDA, not those published by HUD. HUD rounds and uses a non-mathematical formula in determining income limits and rounds to the nearest \$50.00. The Michigan income limits are all calculated based on the very low (50% area median income) figures determined by HUD.

HUD publishes income figures for low income (which is 80% AMGI (Area Median Gross Income), very low income (which is 50% AMGI) and 30% AMGI. HUD has rounded each of the income amounts to the nearest \$50. Only the 50% figures are used by Michigan in determining income limits for the LIHTC program.

For example, Using Alger County, the HUD published figures for 50% AMGI for a family of four is \$21,400. In calculating 30% AMGI, HUD rounds to the nearest \$50, to arrive at a figure of \$12,850. MSHDA, however, uses a straight mathematical figure (without rounding) based on the 50% AMGI figures, to arrive at a 30% AMGI figure of \$12,840. Note that the 30% figure calculated by HUD (\$12,850) and the figure calculated by MDSHDA (\$12,840) differ slightly. A household that moves into a LIHTC unit with an income amount of \$12,841 exceeds the limit for the 30% AMGI.

The income calculated methodology impacts the maximum allowable rent (see **Part 515** for more information). Owners and managers of LIHTC projects must use only the income and rent limit figures distributed by the LIHTC Section of MSHDA for purposes of determining LIHTC eligibility.

Part 510 :: Minimum Income Requirements

The LIHTC program sets only a maximum allowable qualifying income amount and does not set minimum requirements. An owner / manager may elect to set a minimum income for prospective and current tenants, however, such a requirements can not be applied to prospective or current tenants who are Section 8 participants.

For additional information regarding the prohibition against imposing minimum income requirements for Section 8 participants, see MSHDA / LIHTC Policy # 7, "Prohibition Against Applying Minimum Income Requirements for Section 8 Recipients", which is included in **Appendix C**. For additional information regarding Section 8 recipients, see **Part 825 (Section 8 Participants – Discrimination is Prohibited)**.

Part 515 : Maximum Gross Rent

All rents for LIHTC units must be restricted. The maximum allowable rent that can be charged to a unit or household residing in an LIHTC project is governed by the Restrictive Covenant (see [Part 240](#)) for the project. All rent limits for Michigan LIHTC projects correspond to the income limit that is applicable to that tenant. For example, if the qualifying income level is 60% AMGI, then the rent must be restricted at or below the level as well. As with income limits for the LIHTC program, projects must use the MSHDA generated tables in determining the appropriate maximum allowable rent.

The gross rent charged to the household cannot exceed the LIHTC maximum allowable. The gross rent includes the tenant-paid out of pocket amount plus an allowance for tenant-paid utilities. Unlike subsidy programs, such as Section 8 and Section 236 in which tenants pay 30% of their income for rent, the amount of rent paid by an LIHTC tenant is not necessarily based on the actual income amount of that particular household. Rental assistance from government-based programs are not included as part of gross rent.

For more information regarding utility allowances, see [Part 540 \(Utility Allowances\)](#). For more information on rent subsidies, see [Part 525 \(Section 8 Rental Assistance\)](#) and [Part 530 \(Rural Housing Services Rental Assistance\)](#).

515-A Projects Allocated Credit in 1987, 1988, and 1989

For projects allocated credit in 1987, 1988, or 1989, the tenant's gross rent may not exceed 30% of the applicable median income (that is, either 50% or 60% or other percentage, depending on which income set-aside has been chosen) adjusted for family size for the area in which the project is located. For example, in Alger County, based on the income limits effective 04/06/01, the maximum allowable rent figures are as follows:

	1 person	2	3	4	5	6	7	8
50% AMI	\$375	\$427	\$481	\$535	\$577	\$620	\$663	\$706

The above-referenced limits are based on the number of household members and are not impacted by the number of bedrooms in the unit. If the size of the household increases or decreases, the maximum allowable rent that can be charged for that household also changes.

Election to Switch: Owners of a low income building allocated tax credit before 1990 had until February 6, 1994 to make the irrevocable election to continue to use household size or to begin using the number of bedrooms in determining the maximum allowable rent. The election applied only with respect to tenants first occupying any unit in the building after the date of the election.

515-B Projects Allocated Credit After January 1, 1990

Projects receiving tax credit allocations after January 1, 1990, must be rent-restricted based on an imputed, not actual, family size. Family size is imputed by number of bedrooms in the following manner:

1. An efficiency or a unit that does not have a separate bedroom – 1 individual; and
2. A unit that has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable median income for the imputed household size (notwithstanding that the actual household size may be different).

For example

<i>Income Limits (by household size)</i>			
<u>One Person</u>	<u>Two Persons</u>	<u>Three Persons</u>	<u>Four Persons</u>
\$10,000	\$15,000	\$20,000	\$25,000

The rent for a two-bedroom unit is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed household size [(\$20,000 x 30%) divided by 12 months equals \$500]. The \$500 amount would be the maximum allowable gross rent regardless of the number of persons actually occupying a two bedroom unit.

For Alger County, based on the income limits effective 04/06/01, the rent limits are:

	0 bedrooms	1	2	3	4	5	6
50% AMI	\$375	\$401	\$481	\$556	\$620	\$685	\$748

The above-referenced limits are based on the number of bedrooms in the unit and are not impacted by the number of household members. If the size of the household increases or decreases, the maximum allowable rent that can be charged for that unit does not change.

515-C Changes in Rent Limits

MSHDA will publish rent limits whenever HUD issues new income figures, which generally occurs once per year. If the rent limits for the county in which a project is located changes in the middle of a lease term, and the maximum rent that can be charged goes down, the owner must reduce the rents of all low-income units to conform with the new schedule,

regardless of the rent stated in the lease. The development has 45 days to implement the new rent amount. If rent limits rise during the term of a resident's lease, the rent may be increased, depending on the term of the lease. For related topics, see **Part 535 (Gross Rent Floor Election)** and **Part 550 (Updating Utility Allowances)**.

There are special rules for what is or is not counted as rent. Generally, rent includes any fees *required* for occupancy at the project. Customary fees that are normally charged, such as damage deposits, cleaning deposits, pet deposits (except for assistance animals), and/or credit deposits are permissible as long as the amounts are reasonable and charged to all tenants including market rate tenants. However, an eligible tenant cannot be charged a fee for work involved in completing the additional forms or documentation required by the LIHTC Program, such as the Tenant Income Certification and obtaining third party verifications of income and assets.

Charges for any mandatory amenities and/or services, such as garages, carports, meals, laundry, and housekeeping, must be counted as part of the gross rent for these units. Charges for optional services other than housing do not have to be included in gross rent, but they truly must be optional. For more information regarding supportive services and exceptions to this rule, see IRS Notice 89-6 and IRS Revenue Ruling 91-38, Answer 12, which are contained in Appendix H.

If a fee is charged to each resident for a parking space or garage, an alternative must be available, else that charge must be included as part of the rent. See [Part 420 \(Qualified Basis\)](#) for additional information.

Fees for month-to-month tenancies cannot exceed the maximum allowable rent. For example, the maximum allowable rent for a one-bedroom unit is \$400. The rent for the unit is \$375 (including the utility allowance). If the development charges a fee for tenants who elect a month-to-month tenancy, it cannot exceed \$25.

If after occupying a unit, the eligible tenant cannot pay the rent, the owner has the same legal rights in dealing with the LIHTC tenant as with any other tenant. Late Fees (for past due rent payments) are permissible if the fee is reasonable and charged for all tenants, including market rate households.

For related discussions, see [Part 675 \(Lease Agreements\)](#) and [Part 840 \(Transient Persons\)](#).

Part 525 Section 8 / Rental Assistance

Gross rent does not include any payments made to the owner to subsidize the tenant's rent, including Section 8 or any comparable rental assistance program to a unit or its occupants. Only the tenant-paid portion of the rent payment (inclusive of tenant-paid utilities) is considered in determining if the rent exceeds the maximum gross rent permissible. *For example:*

The maximum allowable gross rent for a unit is \$300. A particular tenant is paying \$172, the unit has a utility allowance of \$28 and the owner receives a \$175 Section 8 subsidy for this unit. The rent meets tax credit guidelines because the tenant-paid portion of the rent plus the utility allowance (\$172 + \$28 = \$200) is not more than \$300.

Gifts from family members are not considered to be "rental assistance". Rent paid by family members on behalf of tenants must be counted as income to the tenant, even if paid directly to the apartment complex. See HUD Handbook 4350.3, which is included in [Appendix D](#), for information on determining tenant income. For additional information regarding Section 8 Recipients, see [Part 680 \(Qualifying Section 8 Tenants for LIHTC Units\)](#), [Part 825 \(Section 8 Participants – Discrimination is Prohibited\)](#), and [Part 545-B and Part 545-C \(Sources of Utility Allowances\)](#).

Part 530 Rural Housing Services – Rental Assistance

Management must be aware that RHS (formerly called FmHA) rent rules and those of the LIHTC Program differ somewhat. Those differences could result in proper RHS rents but in incorrect LIHTC rents. The following example appeared in a USDA memorandum dated July 21, 1995:

In a project where the tax credit rent is equal or greater than the basic rent, and a previously eligible tenant's household income increases beyond the tax credit rent. In this case, the tenant may or may not have previously received rental assistance or Section 8. EXAMPLE: One bedroom apartment: Basic rent - \$250. Tax Credit Rent \$300. Only one co-tenant works. Household pays \$200/month and rental assistance pays \$50. Household is both RHS and LIHTC eligible. Second co-tenant goes to work causing the household rent to go to \$350. The new rent level exceeds both basic and tax credit rent. Overage is \$100 due. Tax Credit rent limitations require that the owner charge tenants no more than \$300, which causes a shortage of \$50 per month in overage due RHS. The owner is therefore accountable for this shortage if the project was placed in service prior to January 1, 1991. For projects placed in service on or after January 1, 1991, the owner is allowed to collect the overage due from the tenant to the extent such owner pays an equivalent amount to RHS under Section 515. The tenant cannot be required to move based on tax credit ineligibility.

For additional information regarding RHS projects, see [Part 685 \(Qualifying Tenants in RHS Projects for LIHTC Units\)](#) and [Part 545-A \(Rural Housing Services\)](#). For additional information, see the United States Department of Agriculture (USDA) websites at www.usda.gov and www.rurdev.usda.gov/RHS. For a related discussion, see [Part 1080 \(Interfacing LIHTC with other Government Housing Programs\)](#).

Part 535 :: Gross Rent Floor Election

The area median gross income (AMGI) figures are published annually by the Department of Housing and Urban Development. As the AMGI of an area changes, the maximum allowable rent for a particular unit will change. The maximum gross rent that can be charged may fluctuate up and down as the county median income fluctuates year to year. If the AMGI increases, the maximum allowable gross rent increases. If the AMGI decreases, a reduction in the gross rent may be required; however, the gross rent never needs to go below the maximum that was applicable for the earliest period the building was included in the determination of whether the project is a qualified low income housing project (gross rent floor). The gross rent charged never has to drop below the initial gross rent floor as applied to a unit. That initial gross rent floor is fixed by an election of the owner at either (1) the gross rent level in effect the year the Carryover Allocation was received, or (2) the gross rent level in effect when the building was placed in service. See LIHTC Policy #1, Gross Rent Floor Election, in **Appendix C**, and IRS Revenue Ruling 94-57, which is discussed in **Appendix H**, for further information regarding determining the effective date of the gross rent floor.

Part 540 :: Utility Allowance

The maximum gross rent includes the amount of tenant paid utilities. Utilities include heat, lights, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone or cable television.

When utilities are paid directly by the tenant (as opposed to being paid by the development), a utility allowance must be used to determine maximum eligible unit rent. The utility allowance (for utility costs paid by the tenant) must be subtracted from the maximum gross rent to determine the maximum amount of allowable tenant-paid rent. *For example:*

If the maximum gross rent on a unit is \$350 and the tenant pays utilities with a utility allowance of \$66 per month, the maximum rent chargeable to the tenants is \$284 (\$350 minus \$66).

If all utilities are included in the household's gross rent payment (i.e. paid by the development directly to the provider), no utility allowance is required and the maximum rent that can be charged to the household is the maximum gross rent from the rent tables.

For additional information, see IRS Notice 89-6 (Utility Allowances), which is included in **Appendix H**.

Part 545 : Sources of Utility Allowances

IRS Regulation 1.42-10, summarized below, dictates the form of utility allowance applies to particular units. In certain circumstances, an owner may be required to use different utility allowances for different units in a single project. It is the owner's responsibility to obtain and use the appropriate allowance figures. Since using the incorrect utility allowance can result in overcharging rents, care should be taken in making a correct calculation and in using current utility allowance figures. Overcharging rent is an event of noncompliance.

Owners and/or management agents must contact the appropriate agency to request current utility allowance information. The LIHTC Section at MSHDA does not maintain the various utility allowances.

The IRS requires that utility allowances be set according to IRS Notice 89-6 (see Appendix H). IRS Notice 89-6 lists the different sources of utility allowances for tax credit developments, which include the following:

- **RHS Projects** – Use RHS utility allowances. See [Part 545-A](#).
- **HUD Regulated Buildings** – Use HUD approved utility allowances. See [Part 545-B](#).
- **Individual Apartments Occupied by Residents That Receive HUD Assistance** (Section 8 Existing, etc.) – See [Part 545-C](#).
- **Buildings without RHS or HUD Assistance** – See [Part 545-E](#).
- **Utility Company Estimate** – See [Part 545-F](#).
- **MSHDA – Financed Projects** – See [Part 545-D](#).

545-A Rural Housing Services (The “RHS”)

If a Building receives assistance from Rural Housing Services, the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by RHS for the building.

- RHS-Assisted Buildings – If a building received assistance from RHS, such as a mortgage or Section 515 financing, the building is considered an RHS-assisted building. The applicable utility allowance for all rent-restricted units in the building is the current RHS utility allowance, regardless of whether or not the building also receives other state or federal assistance.
- Tenants receiving RHS Rental Assistance – If *any* resident receives RHS rental assistance payments, the applicable utility allowance for the entire building, (including any units occupied by residents receiving HUD rental assistance payments) is the applicable RHS utility allowance.

For additional information about LIHTC projects that have RHS financing, see [Part 685 \(Qualifying Tenants in RHS Projects for LIHTC Units\)](#).

545-B HUD Regulated Buildings

If a building is regulated by HUD, such as when there is a below-market HUD loan on the building, the applicable utility allowance for all rent-restricted units in the building is the HUD utility allowance. Note there is an exception to this rule, if a resident receives RHS rental assistance, in which case the entire building that the resident is located in is subject to the RHS utility allowance.

545-C Tenants Receiving HUD Rental Assistance

For a tenant receiving HUD rental assistance who resides in a building that is neither RHS-assisted or HUD-regulated and in which there are no tenants who receive RHS tenant assistance, the Public Housing Authority (the “PHA”) utility allowance established for the Section 8 Existing Housing Program must be used for that household. In other words, the PHA utility allowance must be used for Section 8 voucher or certificate holders. Note that if any residents in the building receive RHS rental assistance, the RHS utility allowance applies to the entire building, including the Section 8 unit.

The utility allowance of the Particular PHA that granted the voucher or certificate must be used for that household.

545-D MSHDA-Financed Projects

Utility allowances for projects with MSHDA-financing (i.e. taxable and tax-exempt bonds), are calculated by the Asset Management Division of MSHDA and are updated on an annual basis.

545-E Buildings without RHS or HUD Assistance or MSHDA-Financing

If a building is neither RHS-assisted or HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units is the applicable PHA utility allowance. However, if a local utility company estimate is obtained for any unit in the building, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building (except those units discussed in [545-A](#), [545-B](#), [545-C](#), and [545-D](#)).

545-F Utility Company Estimate

An interested party (including a low-income resident, a building owner, or the Authority) may request the utility company estimation of actual utility consumption for each unit of similar size and construction in the building's geographic area. Such an estimate must be in writing, signed by a local utility company official, prepared on the utility company's letterhead, and maintained in the Development File for the project. Use of the actual utility rates, whether higher or lower, is required once they have been requested. A utility company estimate takes the place of the PHA utility allowance. A utility company estimate does not replace the Section 8 or RHS utility allowance.

Part 550 : Updating the Utility Allowances

To remain in compliance, owners must utilize a correct utility allowance in order to properly determine unit rents. An increase in the utility allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case the contract rent must be lowered. When a utility allowance changes, rents must be refigured within ninety (90) days of the effective date of the change to avoid violating the gross rent limitations, as discussed in **Part 515 (Maximum Gross Rent)**. The gross rent amount must be adjusted, regardless of whether the change takes place in the middle of a lease term and regardless of the rent amount listed in the lease. Utility allowances need to be reviewed and updated as follows:

- When the rents for a project or building are changed or there is a change in who pays the utilities.
- Within 90 days of an update by HUD, RHS, PHA, or local utility supplier.
- Within 90 days of a change in the applicable allowance (e.g., a new tenant is receiving HUD Section 8 rental assistance).
- Annually for projects or buildings with documentation from a utility sponsor.

It is the owner's responsibility to obtain updated utility allowances at least annually. It is also the owner's responsibility to determine when the utility allowance is updated and to obtain that update.

Example: An owner obtained a PHA utility allowance letter in May and the PHA then adjusted its utility allowance on June 1. The owner must apply the new utility allowances to rents due 90 days after June 1 (i.e., rents due on and after September 1). The owner cannot wait until the following May to get an updated letter.

The Owner must have current utility documentation on site or a letter confirming that the prior utility allowances are still applicable. The owner must also provide utility allowance information with its annual report to the Authority.

Part 555 : Annual Utility Allowance Documentation Form

MSHDA requires that documentation be completed each year indicating how utility amounts were determined. An LIHTC Form 043 (Utility Allowance Documentation) must be completed at least once a year or whenever an update is necessary (whichever occurs first). A copy of the form must be submitted to MSHDA once per year with the annual compliance certifications (discussed in [Part 715](#)). The completed LIHTC Form 043 (a copy is included in [Appendix A](#)) must also be kept in the Development File (discussed in [Part 350](#)).